

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	EPA-5-22-113(a)-MN-01
)	
Northern Metals, LLC)	Proceeding Under Sections 113(a)(1)(3) and
Minneapolis, MN)	114(a)(1) of the Clean Air Act, 42 U.S.C.
)	§§ 7413(a)(3) and 7414(a)(1)

Administrative Consent Order

1. The Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5, is issuing this Order to Northern Metals, LLC (NMR) under Sections 113(a)(3) and 114(a)(1) of the Clean Air Act (CAA), 42 U.S.C. §§ 7413(a)(3) and 7414(a)(1).

Statutory and Regulatory Background

2. Pursuant to Section 608 of the CAA, 42 U.S.C. § 7671g, EPA promulgated regulations at 40 C.F.R. Part 82, Subpart F.

3. The purpose of 40 C.F.R. Part 82, Subpart F is to reduce emissions of class I and class II refrigerants and their non-exempt substitutes to the lowest achievable level during the service, maintenance, repair, and disposal of appliances. *See* 40 C.F.R. § 82.150(a).

4. 40 C.F.R. Part 82, Subpart F applies to persons disposing of appliances, including small appliances and motor vehicle air conditioners.

5. Under 40 C.F.R. § 82.152, a “person” means, among other things, any individual or legal entity, including an individual, corporation, partnership, association and any officer, agent, or employee thereof.

6. Under 40 C.F.R. § 82.152, an “appliance” is any device which contains and uses a class I or class II substance or substitute as a refrigerant and which is used for household or

commercial purposes, including any air conditioner, motor vehicle air conditioner (MVAC), refrigerator, chiller, or freezer. For a system with multiple circuits, each independent circuit is considered a separate appliance.

7. Under 40 C.F.R. § 82.152, a “small appliance” is any appliance that is fully manufactured, charged, and hermetically sealed in a factory with five pounds or less of refrigerant, including, but not limited to, refrigerators and freezers (designed for home, commercial, or consumer use), medical or industrial research refrigeration equipment, room air conditioners (including window air conditioners, portable air conditioners, and packaged terminal air heat pumps), dehumidifiers, under-the-counter ice makers, vending machines, and drinking water coolers.

8. Under 40 C.F.R. § 82.154(a), no person maintaining, servicing, repairing, or disposing of appliances may knowingly vent or otherwise release into the environment any refrigerant or substitute from such appliances, with certain exceptions not relevant to this matter.

9. Under 40 C.F.R. §§ 82.155(b)(1) and (2), the final processor—i.e., any person who takes the final step in the disposal process (including but not limited to scrap recyclers and landfill operators) of a small appliance, MVAC or MVAC-like appliance—must either:

- a. Recover any remaining refrigerant from the appliance in accordance with 40 C.F.R. § 82.155 (a); or
- b. Verify using a signed statement or a contract that all refrigerant that had not leaked previously has been recovered from the appliance or shipment of appliances in accordance with 40 C.F.R. § 82.155(a). If using a signed statement, it must include the name and address of the person who recovered the refrigerant and the date the refrigerant was recovered. If using a signed contract between the supplier and the final processor, it must either state that the supplier will recover any remaining refrigerant from the appliance or shipment of appliances in accordance with 40 C.F.R. § 82.155(a) prior to delivery or verify that the refrigerant had been properly recovered prior to receipt by the supplier.

10. Under 40 C.F.R. § 82.155(b)(2)(ii) the final processor must notify suppliers of appliances that refrigerant must be properly recovered in accordance with 40 C.F.R. § 82.155(a) before delivery of the items to the facility. The form of notification may be signs, letters to suppliers, or other equivalent means.

11. Under 40 C.F.R. § 82.155(b)(2)(iii) if all refrigerant has leaked out of the appliance, the final processor must obtain a signed statement that all the refrigerant in the appliance had leaked out prior to delivery to the final processor and recovery is not possible. “Leaked out” in this context means those situations in which the refrigerant has escaped because of system failures, accidents or other unavoidable occurrences not caused by a person’s negligence or deliberate acts such as cutting refrigerant lines.

12. Under Section 113(a)(3) of the CAA, 42 U.S.C. § 7413 (a)(3), the Administrator of EPA may issue an order requiring compliance to any person who has violated or is violating any requirement or prohibition of Title VI - Stratospheric Ozone Protection, 42 U.S.C. § 7671-7671q. The Administrator has delegated this authority to the Director of the Enforcement and Compliance Assurance Division.

13. The Administrator of EPA may require any person who owns or operates an emission source to make reports and provide information required by the Administrator under Section 114(a)(1) of the CAA, 42 U.S.C. § 7414(a)(1). The Administrator has delegated this authority to the Director of the Enforcement and Compliance Assurance Division.

Findings

14. NMR owns and operates scrap recycling facilities (Minnesota Facilities) at the following locations:

- a. 1803 North 2nd Street, Minneapolis, Minnesota (2nd Street Facility)

- b. 9025 Zachary Road North, Maple Grove, Minnesota (Zachary Road Facility)
- c. 521 Barge Channel Road, St. Paul, Minnesota (Barge Channel Road Facility)

15. At the Minnesota Facilities, NMR accepts for recycling and disposal, among other things, small appliances that contain or once contained refrigerant, and is therefore subject to requirements at 40 C.F.R. Part 82, Subpart F.

16. On September 24, 2020, EPA issued to NMR a Finding of Violation (FOV) alleging that NMR violated the regulations for the Protection of Stratospheric Ozone by failing to meet the requirements of 40 C.F.R. Part 82, Subpart F at its Minnesota Facilities.

17. On November 30, 2020, EPA and representatives of NMR met via teleconference to discuss the September 24, 2020, FOV (FOV conference).

18. As detailed in the FOV, NMR failed to recover refrigerants from appliances during scrap recycling or properly verify that refrigerants had been recovered at its Minnesota Facilities, in violation of 40 C.F.R. § 82.155(b)(1) and/or 40 C.F.R. § 82.155(b)(2).

19. Prior to the FOV conference, NMR provided a written response to the FOV, which indicated that a new contract, used to verify proper refrigerant recovery by its suppliers, would be used at the Minnesota Facilities.

20. NMR owns or operates “emission sources” within the meaning of Section 114(a)(1) of the CAA, 42 U.S.C. § 7414(a)(1). Therefore, NMR is subject to the requirements of Section 114(a)(1).

Compliance Program

21. By the effective date of this Order, NMR must achieve, demonstrate and maintain compliance with 40 C.F.R. Part 82, Subpart F at the Minnesota Facilities. Such compliance includes, but is not limited to, the requirements in paragraphs 22 - 27 for any small appliance, MVAC or MVAC-like appliance that are received at the Minnesota Facilities. NMR agrees to take the additional actions in paragraphs 28 – 32 (pertaining to record keeping and reporting for the Minnesota Facilities) by the dates specified in each paragraph until termination of this Order.

22. If small appliances, MVACs, or MVAC-like appliances are delivered to NMR with intact refrigerant lines at the Minnesota Facilities, NMR must use refrigerant recovery to recover any remaining refrigerant in accordance with § 82.155(a) prior to taking the final step in disposal of such appliances.

23. If NMR recovers refrigerant at the Minnesota Facilities in accordance with Paragraph 22, NMR must recover the refrigerant by a properly trained individual. If that individual recovering refrigerant is an employee of NMR, NMR must ensure that the individual is properly trained to use the refrigerant recovery equipment.

24. If an employee of NMR recovers refrigerant in accordance with Paragraph 23, NMR must send the recovered refrigerant to an EPA-certified entity for reclamation or destruction.

25. At the Minnesota Facilities, NMR must not accept small appliances, MVACs, or MVAC-like appliances with cut or dismantled refrigerant lines unless the suppliers can certify that the refrigerant was properly recovered, using a verification statement that meets the requirements of 40 C.F.R. § 82.155(b)(2). An acceptable version of this statement is included as Attachment A to this Order. For suppliers with whom NMR has had or intends to enter into an

ongoing business relationship, this requirement may be satisfied by NMR entering into a contract that meets the requirements of 40 C.F.R. § 82.155(b)(2). An acceptable version of this contract is included as Attachment B to this Order. If an appliance supplier states that all the refrigerant has leaked out of the appliance, NMR must obtain a signed statement from such supplier that all the refrigerant in the appliance had leaked out prior to delivery to NMR and recovery is not possible. “Leaked out” in this context means those situations in which the refrigerant has escaped because of system failures, accidents, or other unavoidable occurrences not caused by a person’s negligence or deliberate acts such as cutting refrigerant lines.

26. At the Minnesota Facilities, NMR must not accept small appliances, MVACs, or MVAC-like appliances with cut or dismantled refrigerant lines using a signed verification statement or contract if NMR knows or has reason to know that the certification or contract is false.

27. Within five business days of the effective date of this Order, NMR must notify its suppliers in writing, including but not limited to placing a permanent sign at the facility entrance, stating that NMR will not accept small appliances, MVACs, or MVAC-like appliances with cut or dismantled refrigerant lines, unless the suppliers can certify that the refrigerant was properly recovered in accordance with 40 C.F.R. § 82.155(a). The form of notification must include, but is not limited to, placing a permanent sign at the facility entrance consistent with this Paragraph 27.

28. At the Minnesota Facilities, NMR must retain copies of receipts for any refrigerant it collects and sends to another company for reclamation or destruction. NMR must also document the number of small appliances, MVACs, or MVAC-like appliances it rejects, the date the appliance was rejected, and the reason for rejecting the item(s).

29. Within 90 days of the effective date of this Order, at the Minnesota Facilities, NMR must develop and follow a written refrigerant management plan that incorporates the provisions of paragraphs 21 through 27. NMR must provide training on the refrigerant management plan and make it available to its employees and contractors that play any role with the contracting, purchasing, accepting, handling, or processing of small appliances, MVACs, or MVAC-like appliances. NMR must keep a written record of such training until termination of this Order.

30. Within 90 days of the effective date of this Order, for the Minnesota Facilities, NMR must provide EPA with:

- a. proof of its compliance with the notice requirements of paragraph 27; and
- b. a copy of its written refrigerant management plan required by paragraph 29.

31. Within six months, one year, 18 months, and two years after the effective date of this Order, for the Minnesota Facilities, NMR must submit to EPA a copy of the following records covering the relevant six-month period under Section 114(a)(1) of the CAA, 42 U.S.C. § 7414(a)(1):

- a. any completed verification statements and contracts entered into pursuant to paragraph 25;
- b. a copy of the records required to be kept by paragraph 28; and
- c. any signed statements certifying that all refrigerant in the appliance had leaked out prior to delivery to NMR and recovery was not possible.

32. NMR must send all reports required by paragraphs 30-31 this Order by electronic mail to r5airenforcement@epa.gov and sutlin.david@epa.gov. If NMR is unable to send a report

to these addresses due to email size restrictions or other problems, NMR should use these email addresses to make additional arrangements for transmission of the relevant report.

General Provisions

33. NMR consents to the transmission of this Order by e-mail at the following e-mail address(es): michael.gross@emrgroup.com, kcampbell@mankogold.com and mdillon@mankogold.com.

34. This Order does not affect NMR's responsibility to comply with other federal, state, and local laws.

35. This Order does not restrict EPA's authority to enforce the CAA and its implementing regulations.

36. NMR makes no admission as to the findings set forth in this Order or liability for the alleged violations identified in this Order.

37. Failure to comply with this Order may subject NMR to penalties of up to \$102,638 per day for each violation under Section 113 of the CAA, 42 U.S.C. § 7413, and 40 C.F.R. Part 19.

38. The terms of this Order are binding on NMR, its assignees and successors. NMR must give notice of this Order to any successors in interest prior to transferring ownership and must simultaneously verify to EPA, at the above address, that it has given the notice.

39. NMR may assert a claim of business confidentiality under 40 C.F.R. Part 2, Subpart B, for any portion of the information NMR submits to EPA. Information subject to a business confidentiality claim is available to the public only to the extent allowed by 40 C.F.R. Part 2, Subpart B. If NMR fails to assert a business confidentiality claim, EPA may make all submitted information available, without further notice, to any member of the public who

requests it. Emission data provided under Section 114 of the CAA, 42 U.S.C. § 7414, is not entitled to confidential treatment under 40 C.F.R. Part 2, Subpart B. “Emission data” is defined at 40 C.F.R. § 2.301.

40. This Order is not subject to the Paperwork Reduction Act, 44 U.S.C. §§ 3501 - 3521, because it seeks collection of information by an agency from specific individuals or entities as part of an administrative action or investigation.

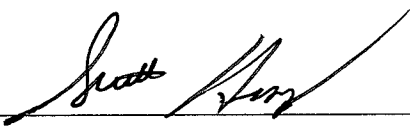
41. EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.

42. NMR agrees to be bound by the terms of this Order and waives any remedies, claims for relief, and otherwise available rights to judicial or administrative review that it may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Section 307(b) of the CAA, 42 U.S.C. § 7607(b).

43. This Order is effective on the date of signature by the Director of the Enforcement and Compliance Assurance Division. This Order will terminate two years from the effective date, provided that NMR have complied with all terms of the Order throughout its duration.

Northern Metals, LLC

09/28/2022
Date



Name: SCOTT HELBERG

Title: COO

United States Environmental Protection Agency

Michael D. Harris
Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 5

Date

ATTACHMENT A

Sample Verification Statement

Supplier Name/Title:

Company:

Address:

City, State, Zip:

Date of Sale:

Supplier verifies that all refrigerant has been properly recovered from all small appliances, motor vehicles containing air conditioners, and motor vehicle air conditioner-like appliances being sold to [Final Processor Name], in accordance with 40 C.F.R. § 82.155(a) prior to delivery.

Individual or legal entity who recovered the refrigerant:

Name:

Address:

Date of recovery:

Supplier Signature

Date

ATTACHMENT B



Appliance Seller's Contract

Sellers Contract/Indemnification For removal of "Hazardous Substances"

SELLER (you fill/sign this part)

Company Name

Owners Name (print)

Address

Owners Signature

City, State, Zip Code

Date

Telephone #

Email Address

Fax #

The company listed above is an independent contractor with respect to Northern Metal Recycling.

The federal Clean Air Act, 42 U.S.C. § 7401 et seq. (including Section 608) and its implementing regulations at 40 CFR Part 82, Subpart F, requires the proper recovery and disposal of refrigerants and non-exempt refrigerant substitutes from motor vehicles and appliances prior to recycling. Supplier certifies that any Materials containing refrigerants or non-exempt refrigerant substitutes as those terms are defined at 40 C.F.R. § 82.32(f), 40 C.F.R. § 82.152 and 40 C.F.R. § 82.154(a) shall be recovered by Supplier and disposed of by Supplier in accordance with 40 C.F.R. § 82.155(a) and all other applicable laws prior to delivery to Receiver. The federal Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2601 et seq. and its implementing regulations at 40 CFR Part 761, govern the removal and disposal of polychlorinated biphenyls ("PCBs"). Supplier certifies that all PCB capacitors, PCB small capacitors or any other PCB containing equipment shall be removed from all Materials by Supplier and disposed of by Supplier in accordance with all applicable laws prior to delivery to Receiver. Supplier certifies that all mercury switches shall be removed from vehicles by Supplier and disposed of by Supplier in accordance with all existing and proposed laws and regulations prior to delivery to Receiver, regardless of whether Supplier delivers the vehicle to Receiver prior to the crushing, flattening, shredding or baling of the vehicle. Other federal, state and local laws, regulations and ordinances also affect the chemical and physical requirements for Materials delivered to the Receiver by the Supplier. Supplier certifies that it will not deliver to Receiver Materials that do not conform to such physical or chemical requirements and shall remove any substances necessary to achieve such conformance. Supplier represents and warrants that all Materials delivered to Receiver shall conform to the foregoing requirements.

The term of this agreement shall be for a period of one (1) year, beginning on the date of this Agreement, and shall automatically renew from year to year unless terminated by the Supplier in writing. Receiver shall have the right, at any time, to cancel this Agreement without prior notice to Supplier.

Certification of Scrap Appliance Compliance

Supplier hereby certifies that the Supplier shall be responsible for recovering refrigerants in accordance with all applicable regulations, including 40 C.F.R. § 82.155(a), prior to delivery to Receiver of any motor vehicle containing motor vehicle air conditioners (MVAC), MVAC-like appliances, or small appliances as those terms are defined at 40 C.F.R. § 82.152, and that Supplier will recover refrigerants in accordance with such regulations prior to delivery of any items to Receiver. Supplier further certifies that the Supplier will remove PCB capacitors, mercury switches, fluids and any other materials listed on the Receiver's List of Prohibited Scrap prior to delivery of any items to Receiver. Notwithstanding any warranty or limitation of warranty herein, Supplier alternatively certifies that Supplier will verify that all refrigerant (including but not limited to chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), and hydrofluorocarbons (HFCs), as defined in 40 CFR Part 82, Subpart F, pursuant to the Clean Air Act Amendments) has been recovered from the appliance or shipment of appliances delivered under this sale in accordance with 40 C.F.R. § 82.155(a), prior to receipt by the Supplier. If all refrigerant has leaked out of an appliance, Supplier will provide to Receiver a signed statement, in accordance with 40 C.F.R. § 82.155(b)(2)(iii), that all the refrigerant in the appliance had leaked out due to system failures, accidents, or other unavoidable occurrences not caused by a person's negligence or deliberate acts such as cutting refrigerant lines.

Indemnification. Supplier shall indemnify, defend and hold harmless, Receiver, and its affiliates and subsidiaries from any and all losses, costs, damages, costs, damages, claims, regulatory enforcement actions, liabilities and expenses, including without limitation, reasonable attorneys' fees, arising directly or indirectly out of any breach by Supplier of this Agreement.

Supplier and Receiver acknowledge that in no instance shall Receiver retain any liability related to Supplier's failure to comply with the terms and conditions set forth herein. Supplier represents and warrants that it has provided Receiver with its true and correct name and address in this Agreement, and that this Agreement shall also be binding on any and all entities or persons related to or affiliated with Supplier.

The term of this agreement shall be for a period of one (1) year, beginning on the date of this Agreement, and shall automatically renew from year to year unless terminated by the Supplier in writing. Receiver shall have the right, at any time, to cancel this Agreement without prior notice to Supplier.

Company Name _____

Address _____

City, State, Zip _____

Authorized Signature _____

Name (please print) _____

Date _____

APPENDIX A: UNACCEPTABLE MATERIALS LIST

The following is a list of materials that, by themselves,⁶ Northern Metals **WILL NOT ACCEPT** at any of its facilities:

1. **Airbag canisters.**
2. **Asbestos or asbestos containing materials**, including any wire or cable that contains asbestos.
3. **Chemicals or containers that currently contain chemicals.**
4. **Cracked and/or broken lead-acid batteries**, including pieces of batteries.⁷
5. **NiCad, lithium or other batteries that are not lead-acid type.**
6. **Explosive or flammable materials.**
7. **Fluorescent lights including ballasts.**
8. **Any "Hazardous Waste" as defined by any applicable federal, state, or local legal requirement.**
9. **Mercury or any mercury containing device or material.**
10. **PCB capacitors, PCB capacitor-bearing materials, PCB containing transformers, and any other PCB containing device or material.**
11. **Radioactive materials.**
12. **Vehicle used oil filters.**
13. **Waste oil in free flowing form.**

⁶ Note that some of these materials may be found in vehicles to be processed in the ELV. These vehicles will be processed as addressed in this plan.

⁷ Intact lead-acid batteries are accepted by Northern Metals. However, these batteries will be handled according to applicable regulations and shipped offsite for processing; they will not be processed or shredded by Northern Metals.

APPENDIX B: PROVISIONALLY ACCEPTABLE MATERIALS LIST

The following is a list of materials that Northern Metals **WILL ACCEPT** at its facilities, **BUT ONLY IF THEY MEET THE LISTED PROVISIONS:**

1. **Appliances that normally contain refrigerants**, including air conditioners, dehumidifiers, freezers, ice makers, refrigerators, vending machines, and water coolers, **BUT ONLY IF** the refrigerants, hazardous wastes, pollutants, and contaminants, including mercury containing components, are or have been removed by Northern Metals or a state certified appliance recycler.
2. **Barrels, drums, or other containers**, **BUT ONLY IF** they have been emptied and cut into two pieces.
3. **Brake shoes**, **BUT ONLY IF** they contain no asbestos.
4. **Compressed gas cylinders and oxygen bottles**, **BUT ONLY IF** they have been cut into two pieces, and the valves have been removed.
5. **Gauges and measuring devices**, **BUT ONLY IF** free of hazardous materials, specifically including mercury and radioactive materials.
6. **Gas tanks or fuel tanks**, **BUT ONLY IF** the tanks have been completely drained and cut into two pieces .
7. **Larger tanks**, **BUT ONLY IF** the tank is accompanied by a certification that the material inside the tank has been removed and the tank either is cut into two pieces or has a hole for the purpose of and adequate for visual inspection by a trained Northern Metals employee.
8. **Medical and dental equipment**, **BUT ONLY IF** the equipment does not contain any electronics, hazardous wastes, pollutants, and contaminants, and the Environmental Manager has inspected the equipment and approved its acceptance.
9. **Metallic sludges and drosses**, **BUT ONLY IF** the supplier provides documentation acceptable to the Environmental Manager or his/her designee showing the sludge or dross does not contain hazardous wastes, pollutants or contaminants and has been generate in compliance with applicable legal requirements.
10. **Military and/or government scrap**, **BUT ONLY IF** it is certified to be free of explosive, flammable, and hazardous materials.
11. **Sealed units**, including drivelines, hydraulic cylinders and jacks, propane tanks, and shock absorbers **BUT ONLY IF** drained of all oils and other nonmetallic substances and punctured.
12. **Transformers and transformer components**, **BUT ONLY IF** certified to be free of PCBs and other hazardous materials, pollutants, and contaminants.
13. **Vehicles that have been baled, logged, crushed or otherwise compressed**, **BUT ONLY IF** the gas tanks, any refrigerants, and any hazardous materials, pollutants, or contaminant, including mercury containing components, have been removed.
14. **Vehicle scrap associated with oils**, including motor blocks, torque converters, and transmissions, **BUT ONLY IF** they have been drained of all fluids.